

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2316

SPONSOR: Senator Atwater

SUBJECT: Water Supply

DATE: April 3, 2003

REVISED: 04/07/2003 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>CU</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides for the development of a water conservation guidance manual by the Department of Environmental Protection (Department or DEP), and provides that the water management districts must adopt the manual by rule. Public water supply utilities are required to develop water conservation programs using options provided in the manual.

This bill prohibits the water management districts or the department from regulating water produced by domestic wastewater treatment facilities. Regional water supply plans must be amended to include identification of any water reservation rules adopted, and an analysis of areas where variance provisions may be used to create water or promote water resource development.

This bill provides that water management districts are encouraged to implement water resource development projects as expeditiously as possible. The water management districts are required to identify projects that produce water for consumptive use in their annual budget submissions, and are encouraged to establish revolving loan funds to promote the development of alternative water supplies.

The bill provides that water management district governing boards and the department do not have to consider "Local Sources First" requirements when reviewing consumptive use permit (CUP) applications under certain conditions, and provides that longer duration permits can be issued by a water management district or the department for CUP applicants providing assurances of effective and efficient water conservation measures. The Secretary of the DEP is authorized to grant variances from reclamation and mitigation requirements for projects that provide water supply development or water resource development consistent with approved regional water supply plans.

The bill establishes that the Legislatures encourages the development of incentive-based programs to implement water reuse, and provides that the results of reuse feasibility studies will govern permitting decisions for reuse facilities, and permitting decisions for CUPs issued for the use of reclaimed water.

The bill provides that for purposes of use of Florida Forever funds, the definition of water resource development projects does not include the construction of potable water treatment facilities. The bill provides for a feasibility study for the augmentation of groundwater supplies in South Florida through the discharge of reclaimed water into canals for transport and subsequent reuse. Last, the bill provides that nothing in the feasibility study can be used to alter the Comprehensive Everglades Restoration Program (CERP) or the implementation of the federal Water Resource Development Act (WRDA) of 2000.

This bill ss. 373.023, 373.0361, 373.0831, 373.1961, 373.223, 373.225, 373.246, 373.250, 378.212, 403.064, 403.1835, and 259.03, F.S., and creates new chapter law.

II. Present Situation:

Florida Water Use Facts:

An average of 150 billion gallons of rain falls each year in Florida, and another 26 billions gallons of water flows into the state, mostly from rivers originated in Georgia and Alabama. Nearly 107 billion gallons (70%) of the rain returns to the atmosphere through evaporation and plant transpiration in a process called evapotranspiration. Each day in Florida, 2.7 billion gallons of water are incorporated into products or crops, consumed by humans or livestock, or otherwise removed from the immediate environment through other consumptive users. The remainder, 66 billion gallons of water, flows out to the ocean through rivers or streams, or seeps into the ground to recharge the Floridan aquifer. Though the state averages over 50 inches of rain in a year, population growth is not stagnant. The resource that is supplying 16 million residents now will have to supply more than 21 million residents by the year 2020.

Current Law:

In Art. II, s. 7, the Florida Constitution establishes a state policy of "conserving and protecting" Florida's natural resources. The State Constitution requires that state law make adequate provision for the "abatement of air and water pollution...and for conservation and protection of natural resources." In s. 373.016, F.S., the Legislature declares that the waters of the state are among its most basic resources, and that this resource has not been conserved or fully controlled.

In 1972, the Legislature enacted the Florida Water Resources Act which created the five water management districts and provided the then Department of Natural Resources with the "power and responsibility to accomplish that conservation, protection, management and control of the waters of the state... through the delegation of powers to the various districts". Even then, water conservation concerns were noted. During the 1972 Regular Session, the League of Women Voters addressed the House Natural Resources Committee, and in a written statement said:

"We support national policies and procedures which promote comprehensive long-range planning for conservation and development of water resources and improvement of water

quality. The League agrees with many conservationists throughout our state that the most serious problem facing Florida today is that of the diminishing water supply".

US Environmental Protection Agency

In 1998, the US EPA issued guidelines for water conservation plans for public water systems. The EPA said that the states could, if they wanted to, require water systems to submit a water conservation plan that met EPA guidelines or any other guidelines as a condition of receiving a loan under the Drinking Water State Revolving Loan Fund. The guidelines provide information on water conservation measures such as universal metering, water accounting and loss control, water-use audits, retro-fitting, reuse and recycling, and water-user regulation. The DEP rules did not include conservation measures in the state's Drinking Water SRF Program, but those rules are being revised to include the promotion of water conservation measures.

Florida Department of Environmental Protection

The DEP is required, under chapter 373, F.S., to "take into account cumulative impacts on water resources and manage those resources in a manner to ensure their sustainability", and to protect those water resources by requiring the use of water from other sources, including "all naturally occurring water sources and all alternative water sources, including but not limited to... conservation...".

Florida law requires that the Water Resources Implementation Rule serve as part of the Florida Water Plan. As part of the Rule, the DEP has included a water conservation element to provide that the "overall water conservation goal of the state shall be to prevent and reduce wasteful, uneconomical, impractical, or unreasonable use of water resources. Conservation of water shall be required unless not economically or environmentally feasible." The rule provides the water management districts with guidance to establish conservation goals, and directs the districts to establish efficiency standards for urban, industrial, and agricultural demands through restrictions against inefficient irrigation, imposition of year-round irrigation restrictions, and promotion of water-conserving rate structures.

In 2002, the DEP began developing the "Florida Water Conservation Initiative" to respond to numerous concerns, including the end of a severe drought, future supply concerns, and the emergence of new technologies for water conservation.

Water Management Districts

In 1992, the South Florida Water Management district adopted rules that imposed specific water conservation requirements on public water supply utilities and associated local governments, on commercial/industrial users, on landscape and golf course users, and on agricultural users. For individual water use permits to be acquired, all users must comply with the requirements depending on the user groups.

The St. Johns River Water Management District has a Water Conservation Rule that provides for year-round irrigation restrictions. The rule, which has been in place since 1991, applies to all users in the district the use water outdoors whether the source is a private well or a water supply utility. The District also has additional restrictions in place for portions of Brevard, Lake, Marion, Orange and Polk counties, and for all of Seminole and Volusia counties. These areas have not received enough rainfall to ease the water deficit caused by the recent drought.

The Southwest Florida Water Management District's Governing Board recently approved proposed changes to the District's "Year Round Conservation Measures" rule with mandatory measures applicable during times of "no water shortage" through water conservation practices and water conserving devices. Users with access to more than one source of water must use the least limited of the sources, irrigation is restricted, and landscape irrigation is limited.

The Suwannee River Water Management District is home to at least 250 identified springs, five major river systems, and numerous lakes. According to the District, most of these systems are in relatively good conditions, and an adequate water supply is available to meet existing and future District needs. The District does not have a special "water conservation rule".

Last, the Northwest Florida Water Management District does not have a "water conservation rule" but does, like all four other districts, have requirements for declaring water shortages and for designating water resource caution areas. Within the District, Santa Rosa, Okaloosa and Walton counties have been declared water resource caution areas where freshwater resources are experiencing, or are expected to experience within the next 20 years, significant or widespread reductions in fresh water levels and salt water intrusion.

Florida Water Conservation Initiative

The Florida Water Conservation Initiative, started more than two years ago, represents the efforts of the DEP, the five water management districts, the Department of Agriculture & Consumer Services, the Public Service Commission, and individuals representing all facets of water users or producers. Six work groups were created and in April 2002, the final Initiative was issued with recommendations to assist in identifying and prioritizing changes that could result in the statewide conservation of water. The three top recommendations in priority order from each of the six work groups are as follows:

Agriculture: Cost share incentives to promote water conservation, more mobile irrigation labs to improve best management practices, increased rainfall harvesting and recycling of irrigation water.

Landscaping: Design and adopt state irrigation design and installation standards, expand and coordinate current education and outreach programs, and establish statewide training and certification programs.

Water Pricing: Phase in conservation rate structures, require drought rates, consider the use of market principles in the allocation of water.

Industrial/Commercial/Institutional: Consider establishing a "Conservation Certification" program, consider a range of financial and regulatory incentives and alternative supply credits, consider cooperative funding for the use of alternative technologies.

Indoor Water Use: Replace inefficient toilets, retrofit inefficient plumbing fixtures, provide incentives to retrofit inefficient homes.

Reuse of reclaimed water: Encourage metering and volume-based rate structure for reclaimed water service, expand education and outreach, facilitate seasonal reclaimed water storage.

(Please see "*Water Conservation Interim Project*", Committee on Natural Resources, Florida House of Representatives, 2002-2004 Session, for information contained in "Present Situation" section of this analysis)

III. Effect of Proposed Changes:

Section 1: Creates chapter law provisions directing the DEP to create a "Water Conservation Guidance Manual" containing a series of options available to public and private water supply utilities when developing a water conservation program. Options can include informative billing, rebates for using water efficient devices, educational programs, and conservation or drought rate structures. The DEP is directed to develop the manual by November 15, 2003, in consultation with representatives of water utilities, environmental and community organizations, business organizations, and local governments.

The state's water management districts are directed to subsequently adopt the manual by March 15, 2004, by reference, in rules governing the issuance of CUPs. Any water supply utility with a CUP must choose options from the manual in order to meet the water conservation requirements of that permit.

Section 2: Amends s. 373.023, F.S., to prohibit the state or a water management district from regulating water produced by domestic wastewater treatment facilities, thereby creating a CUP exemption for reuse water suppliers. Current health and safety standards for reuse are unchanged.

Section 3: Amends s. 373.0361, F.S., relating to the development of regional water supply plans, to include requirements that regional plans identify any water reservation rules adopted, and include an analysis of any areas where variance provisions may be used to create water or promote water resource development. New language is added to prohibit the use of the regional water supply plan, or any of its components, as criteria for the review of CUPs unless the plan or component has been adopted by rule.

Section 4: Amends s. 373.0831, F.S., relating to water resource development and water supply development projects. Encourages the water management districts to implement water resource development projects as expeditiously as possible. Requires that the districts identify in their annual budget submission those projects that produce additional water for consumptive use. Revises criteria by which water supply projects are given priority consideration. Directs the water management district to issue 20 year CUPs, and to give priority funding to alternative water supply projects that are contained in an adopted regional water supply plan.

Section 5: Amends s. 373.1961, F.S., relating to water production. Encourages the water management districts to establish a revolving loan fund to promote the development of alternative water supplies.

Section 6: Amends s. 373.223, F.S., to provide that a governing board or the department does not have to consider "Local Sources First" requirements when reviewing CUP applications from utilities that are implementing water supply development using alternative sources, or implementing recovery or prevention strategies as required by a regional water supply plan; or utilities that are using interconnections; or utilities that own or operate facilities located in more than one county.

Section 7: Creates subsection (4) in s. 373.235, F.S., to authorize the department or a water management district to issue longer duration permits to CUP applicants that implement and provide reasonable assurances of effective and efficient conservation measures exceeding the industry average or the average for the type of water use, if sufficient data exists to provide reasonable assurances that the conditions of the permit will continue to be met for the added length of the permit. Permit holders receiving extended length permits may be required by a governing board of the department of provide compliance reports every 5 years.

Section 8: Amends subsection (6) of s. 373.246, F.S., to provide that permittees who receive notification from a water management district or the department that permit conditions are changed or suspended due to water shortages or emergencies must comply with the order, subject to the right to challenge the order. Permit applicants are not required to demonstrate the ability to comply with future water shortage or emergency orders as a condition to obtaining a CUP.

Section 9: Amends subsection (4) of s. 373.250, F.S., to provide that a water management district does not have the authority to require utilities to provide reclaimed water.

Section 10: Amends subsection (1) of s. 378.212, F.S., to provide that the DEP Secretary may grant a variance from the phosphate reclamation or mining reclamation requirements of chapter 378, F.S., or the mitigation requirements of chapter 373, F.S., for reclamation projects providing water supply development or water resource development consistent with approved regional water supply plans if regional water resources are not adversely affected.

Section 11: Amends s. 403.064, F.S., to establish the Legislature's encouragement of the development of incentive-based programs to implement water reuse. Provides that the results of reuse feasibility studies will govern permitting decisions for reuse facilities under chapter 403, F.S., and for CUP permits issued for reclaimed water under chapter 373, F.S.

Section 12: Amends s. 403.1835, F.S., to authorize the DEP to make deposits to financial institutions that earn less than the prevailing rate for US Treasury securities with corresponding maturities, to enable below-market interest loans to certain entities.

Section 13: Amends s. 259.03, F.S., to provide that the definition of "water resource development project" does not include the construction of potable water treatment facilities.

Section 14: Establishes legislative findings that groundwater levels within specific areas identified in the Lower East Coast Regional Water Supply Plan approved by the SFWMD can benefit from augmentation, and that the discharge of reclaimed water into canals for transport and subsequent reuse may provide an environmentally acceptable means to augment water

supplies and enhance natural systems. Establishes the Legislature's recognition that water quality and water quantity issues must be better understood and resolved, and that the co-location of enclosed conduits for conveyance of water for reuse should be explored for cost savings. Requires that the DEP, in consultation with the SFWMD and other entities, including local governments and local utilities, conduct a feasibility study on these issues. Preliminary reports must be issued by the DEP for public comment by November 1, 2003. Written reports on the findings must be submitted by the DEP to the Governor and the appropriate substantive committees of the Legislature by January 31, 2004. Provides that nothing in this section can be used to alter the purpose of the CERP or the implementation of WRDA 2000.

Section 15: Provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Public and private utilities will incur some initial costs due to provisions of the bill requiring the development of water conservation programs.

Consumptive use permit applicants may see some financial benefit in development of alternative water supply projects which are eligible to receive longer-term consumptive use permits, and priority consideration for funding from the revolving loan fund being created in this bill.

Some consumers will pay more for water if a public or private utility implements water conservation rates or drought rates.

Beneficiaries of water created or supplied by water resource development projects funded through the revolving loan fund authorized in the bill will ultimately pay for the costs of those projects as the end users of the water being created.

C. **Government Sector Impact:**

The South Florida Water Management District anticipates no fiscal impact from the provisions of this bill. However, provisions of the bill specifically require that the district participate in a study, with the DEP and other agencies, to consider the feasibility of augmenting groundwater by discharging reclaimed water into canals for transport and subsequent reuse in South Florida.

All five water management districts may incur some initial costs in the startup of the revolving loan fund authorized in the bill for water resource development projects. Also, revisions to regional water supply plans are required under the bill

The DEP can expect to incur some costs in developing the water conservation guidance manual in consultation with representatives from the water management districts, public water supply utilities, domestic wastewater utilities, environmental and community organizations, business organizations, and cities and counties.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Amendments:**

#1 by Natural Resources:

The amendment **removes** the following provisions from the bill:

- Prohibiting the state or a water management district from regulating water produced by domestic wastewater treatment facilities.
- Requiring the water management districts identify projects that produce additional water for consumptive use in their annual budget submissions.
- Exemptions from "Local Sources First" requirements for utilities implementing water supply development using alternative sources, or implementing other recovery measures.
- Longer duration permits for applicants that implement and provide reasonable assurance and effective and efficient conservation measures.
- Permittee compliance with declaration of water shortages or emergencies with the right to challenge such a declaration.
- Limiting the authority of a water management district to require a utility to grant reclaimed water.
- Requirements that reuse feasibility studies will govern permitting decisions under chapter 403 and chapter 373.
- "Water resource development project" under the Florida Forever program does not include the construction of potable water treatment facilities.

The amendment **revises** water conservation requirements to provide:

- The DEP water conservation guidance manual must contain a menu of water conservation measures from which public water supply utilities may select in developing a comprehensive, goal-based water conservation program.
- The manual must promote statewide consistency in the approach to utility conservation.
- Measures in the manual may include water conservation audits, informative billing, measures to promote the more effective and efficient reuse of reclaimed water, and programs to apply utility profits generated through conservation and drought rates to additional water conservation programs or water supply development.
- While the manual can provide some flexibility, all utilities are expected to have at least one basic program in universal metering, water accounting and loss control, cost of service accounting and metered water rates, information programs on water conservation, and landscaping efficiency programs.
- The manual must be developed no later than June 15, 2004, and adopted by rule no later than December 15, 2004. Interested participants must include three utilities that are members of the American Water Works Association, a representative of the Florida Chamber of Commerce, two utilities that are members of the Florida Water Environment Association, representatives of counties and municipalities, and representatives of environmental organizations.
- Public water supply utilities can choose to comply with standard water conservation requirements for obtaining a CUP, or may choose to develop a comprehensive program based on the options in the manual, so long as certain requirements are met.

The amendment **adds** the following provisions:

- Authorizes DEP to grant mining reclamation variances for projects that provide water supply development or water resource developments, provided regional water resources are not adversely affected, and if a project is consistent with an applicable regional water supply plan.
- Removes the cap on the issuance of bonds by the Florida Water Pollution Control Finance Authority to fund projects under the Clean Water State Revolving Fund. (WITH TITLE AMENDMENT)